

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

WP(C).No. 35281 of 2005(A)

CC.2695/2001 of ADDL.C.J.M., ERNAKULAM
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PETITIONER:

1. NELLIKUNNAN ABDUL AZEEZ,
S/O. NELLIKUNNAN MUHAMMED, DOWN HILL, MALAPPURAM.
2. NELLIKUNNAN ASHARAF,
S/O. NELLIKUNNAN MUHAMMED, DOWN HILL, MALAPPURAM.

BY ADV. SRI.K.SHRIHARI RAO
SMT.N.SHOBHA
SRI.B.R.MURALEEDHARAN
SRI.P.N.ANOOP

RESPONDENTS:

1. V.K.C. CREDIT AND FOREX SERVICES (P)LTD.
NO.39/1728, 2ND FLOOR, THARAKAN HOUSE, PALLIMUKKU,
ERNAKULAM, REPRESENTED BY ITS POWER OF ATTORNEY
HOLDER, MR.K.EDWIN, AGED 22 YEARS, RESIDING AT
11/481, PATTALAM ROAD, COCHIN-1.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADV. SRI.P.SATHISAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE SEARCH REPORT DT. 18.3.2004.

EXT.P2 TRUE COPY OF COMPLAINT CC2695/01 DT.15.11.01
ON THE FILE OF THE ADDL.CHIEF JUDICIAL MAGISTRATE COURT,
ERNAKULAM.

/TRUE COPY/

R. BASANT, J.

W.P.C.No. 35281 of 2005 A

Dated this the 7th day of March, 2007

JUDGMENT

The petitioners are accused 3 and 4 in a prosecution under Section 138 of the N.I. Act. The first accused is a Private Ltd. Company. The second accused is the Managing Director of the said company, who has signed the cheque. Petitioners have admittedly not signed the cheque. They are arrayed as accused on the assertion that they are Directors of the company. Of course there is a further sweeping allegation in paragraph 3 that:

“accused 2 to 4 are directors of the company, 1st accused who were responsible and in charge of the company when the dishonoured cheque was issued and subsequently.”

2. The petitioners have come before this Court to complain that they were not Directors of the company on the date of the cheque, on the date of presentation of the cheque, on the date of dishonour of the cheque, on the date of the notice of demand or on the date on which the payment was expected to be made. They were Directors. They have produced before court documents to show that

they had retired from the Board of Directors of the company w.e.f. 20.11.1995. The cheque bears the date 15.3.2001. All the events which go to the making of the offence had taken place after the petitioners ceased to be the Directors of the company w.e.f. 20.11.1995.

3. The learned counsel for the petitioners submits that continuance of the prosecution against the petitioners in these circumstances does amount to gross miscarriage of justice. The complainant has nothing to show that the petitioners had anything to do with the company on the relevant date. In these circumstances the prosecution in so far as it relates to the petitioners/accused 3 and 4 may be quashed, it is prayed.

4. The respondent/complainant has entered appearance. The respondent/complainant does not make any assertion and there are no materials to make such an assertion, that the petitioners were Directors of the company on the date of the cheque or thereafter at any point of time. In the total absence of an attempt to assert before me that the petitioners were Directors of the company on any day after 20.11.1995, I am satisfied that this is an eminently fit case where powers under Article 227 of the Constitution and/or under Section 482 Cr.P.C. can and ought to be

invoked to bring to premature termination the prosecution in so far as it relates to the petitioners.

5. This Writ Petition is, in these circumstances, allowed. C.C.No. 2695 of 2001 pending before the Addl. Chief Judicial Magistrate Court, Ernakulam, in so far as it relates to the petitioners/accused 3 and 4 is hereby quashed.

(R. BASANT)
Judge

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